IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

CRL.A.No. 1358 of 2006(A)

CRA.698/2005 of SESSIONS COURT, TRIVANDRUM
CC.55/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEYYATTINKARA

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APPELLANT:

NAGENDRAN, S/O. CHELLAPPAN PANICKER,
C.NO.9688, CENTRAL PRISON, POOJAPURA,
THIRUVANANTHAPURAM-695 012.

BY ADV. ADV.S.D.ASOKAN(STATE BRIEF)

RESPONDENTS:

THE STATE OF KERALA,
REPRESENTED BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. No. 1358 of 2006

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Dated this the 30th day of November, 2006

JUDGMENT

Appeal is filed through the jail authorities. The appellant, 1st accused in Crl.A.No.698/2005 on the file of the Court of the Sessions Judge, Thiruvananthapuram, was found guilty under sections 457 and 380 IPC and he was convicted thereunder and sentenced to undergo rigorous imprisonment[for a period of two years and to pay fine of Rs.3,000/- under section 380 IPC and in default to undergo rigorous imprisonment three months and sentenced to undergo rigorous imprisonment two years and to pay fine of Rs.3,000/- under section 457 IPC and in default to undergo rigorous imprisonment for three months. Against the above finding, the appellant had already filed an appeal before the Sessions Court, Thiruvananthapuram as Crl. A. No.698/2005. The appellate court after hearing the appeal confirmed the conviction and sentence awarded against the appellant. Aggrieved by the above, the petitioner has approached this Court by filing the appeal. This Court finds that the appeal ought to have been filed as a revision through the jail authorities. Hence, this Court is treating the appeal as a revision and entertained the same under the provisions of Section 397 read with section 410 Crl.P.C.

2. Charge has been framed against the appellant and the 2nd accused. As the 2nd accused was absconding, the appellant alone faced trial in the case. The prosecution case against the appellant and the 2nd accused is that on the intervening night of 15th and 16th July, 2001 the appellant along with the 2nd accused break open the door of the residential house of PW1 and committed theft of four silk sarees, rupees twenty two thousand in cash and three small gold lockets. It is also the prosecution case that the crime was originally registered by Parassala Police and consequent on the arrest of the appellant in a suspicious circumstance and after recording confession statement of the appellant, regarding the occurrence in the case, the F.I.R. was then transferred to Neyyattinkara Police Station. The then Sub Inspector of Police Neyyattinkara conducted the investigation and laid the final report. To prove the case, the prosecution examined PW1 to PW5 and Exts.P1 to P6 were marked. MO1 series was also marked. After closing the evidence, the petitioner was questioned under section 313 Cr.P.C. He denied the allegation levelled against him and stated that the police foisted the case against him. Relying on the evidence adduced by the prosecution, the trial court found the appellant guilty of the offences punishable under sections 457 and 380 IPC and he was convicted thereunder and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine

of Rs.3,000/- under section 380 IPC and in default to undergo rigorous imprisonment for three months. He was also sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.3,000/- under section 457 IPC and in default to undergo rigorous imprisonment for three months. The above conviction and sentence ordered by the trial court were challenged in Crl.A.No.698/2005 before the appellate court. The appellate court after hearing the appeal confirmed the conviction and sentence awarded against the appellant. Aggrieved by the above, the petitioner has approached this Court for setting aside the conviction and sentence awarded against the petitioner.

3. State brief has been appointed for appearing on behalf of the petitioner. This Court heard both the learned counsel for the petitioner as well as the Public Prosecutor.

4. The learned counsel for the petitioner submits that both the courts below have erred in finding that the petitioner was guilty of the charges. The learned counsel also submits that Ext.P5(a) statement alleged to have been given by the petitioner should not have been relied on by the trial court, as there is no independent evidence to prove the recovery of MO1 series.

5. The prosecution case against the petitioner is that he along with the 2nd accused break open the door of the residential house of PW1 and committed theft of four sillk sarees, Rs.22,000/- in cash and three gold lockets. PW1 reported the matter to the Neyyattinkara Police Station. Consequent on the arrest of the appellant under a suspicious circumstance by then then Sub Inspector of Police, Parassala Police Station, the then Sub Inspector of Police, Parassala registered the crime and conducted the investigation and after recording his confession statement, the F.I.R. was transferred to Neyyattinkara Police Station. The prosecution relied on the evidence of PW1 to PW3 and PW4. PW1 is the defacto-complainant who had identified MO1 series sarees. PW3 had stated before the court that on the basis of ther eport and the case diary transferred from Parassala Police Station, crime was registered against the petitioner. The evidence of PW4 would show that he took the appellant to the shop of CW3 and recovered MO1 sarees. The trial court as well as the appellate court found that the prosecution had succeeded in proving the confession of the appellant under Ext.P5(a) in relation to recovery of MO1 sarees. Non examination of any witness for the recovery of MO1 is not fatal to the prosecution. In the above circumstances, the petition does not require any interference by this Court.

6. With regard to the contention that the sentence awarded against the petitioner is excessive, the appellate court found that the petitioner was a habitual offender and he was accused in several other cases. Hence, this Court is of the view that the sentence awarded against the petitioner is not excessive. However, it is only proper for this Court to order that the sentences now awarded against the petitioner shall run concurrently. Ordered accordingly.

7. In the result, the revision petition is dismissed confirming the conviction and sentence awarded by the courts below.

K.Thankappan,
Judge.

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K. Thankappan,J.

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Judgment

30-11-2006